

REMARKS

This Amendment is being filed in response to the Office Action mailed January 5, 2005. Claims 1-24 were rejected. Applicant has amended Claims 1, 6, 8, 9, 12 and 14 herein.

SPECIFICATION

Applicant has corrected the specification to capitalize the sole use of the mark KEVLAR and to include generic terminology as requested.

CLAIM REJECTIONS – 35 USC 112, second paragraph

Claims 1, 6, 8, 9 and 12 have been amended to correct all antecedent basis problems.

As to Claim 1 and the claims dependent thereon, Applicant is seeking protection of the security system alone. Accordingly, Applicant has amended Claim 1 such that references to the water heater are recited in a functional manner.

In regard to Claim 9 and the claims dependent thereon, Applicant is seeking protection of the buckle and the strap. Accordingly, Applicant has amended Claim 9 to positively recite the strap as a limitation.

CLAIM REJECTIONS – 35 USC § 102(b) – CLAIMS 9-12

Claims 9-12 were rejected under 35 U.S.C. § 102(e) as being anticipated by Kosh et al. (6,665,913).

Applicant has amended independent Claim 9 such that is adapted to receive two straps. In particular, Claim 9 was amended to include a second bar to engage a second strap.

As an example and not by way of limitation, a preferred embodiment of such a buckle is illustrated in Figures 9-11 of the present application. As shown in the cross-sectional view of Figure 11, the buckle includes an outer portion 87 that forms a sidebar 96 with an inner portion 85. The sidebar 96 and a slide 107 engage a first strap. The buckle includes additional bars 103, 105 for engaging a second strap 75.

Independent Claim 9 has been amended to recite a bar to engage a second strap. The bar may comprise a crossbar as recited in newly added dependent Claim 25, or a second a sidebar as recited in added Claim 26.

Kosh (6,665,913) merely discloses a buckle for receiving a single strap. Since Kosh is not directed to restraining water heaters or any such structures which require two straps from opposing ends, Kosh does not suggest a buckle for engaging two straps. Accordingly, Applicant respectfully submits that independent Claim 9 is allowable over Kosh.

CLAIM REJECTIONS – 35 USC § 103 – CLAIMS 1-8 & 13-24

Claims 1, 3, 14, 18 and 21-23 were rejected under 35 U.S.C. § 103(a) as being unpatentable over Enochs (6,138,864) in view of Heard (3,894,707). Enochs discloses a security system having metal straps 28, 29 (col. 2:46). Heard discloses a mounting device having a flexible strap 70. The Office Action states that Enochs discloses the

claimed invention except for, among other things, the limitations of the strap assembly having a woven configuration free of sharp edges.

At the outset, it bears emphasis that Applicant's claimed invention is directed to a security system for water heaters only. The focus of Applicant's invention is entirely directed to water heaters, as Applicant has no intention to pursue claims on straps or fastening systems in general. In the context of water heaters, Applicant's claimed invention is novel and non-obvious. The recent emergence of infringing systems for water heaters bears witness to the novelty of Applicant's claimed invention.

In the Background of the Invention, Applicant specifically indicates that conventional water heater systems consist of metallic straps which lead to hazardous conditions. Enochs, therefore, is representative of the prior art already mentioned by Applicant.

To establish a *prima facie* case of obviousness, three basic criteria must be met:

- 1) there must be some suggestion or motivation, either in the references themselves or in the knowledge generally available to one of ordinary skill in the art, to modify the reference or to combine reference teachings;
- 2) there must be a reasonable expectation of success; and
- 3) the prior art reference(s) must teach or suggest all the claim limitations.

MPEP § 2142.

With reference to the Office Action, the mere fact that references may be combined or modified is insufficient to establish obviousness. See *MPEP §2143.01*. There must be motivation in the references themselves or in the knowledge generally

available to one of ordinary skill in the art to combine the references. In other words, the questions to be answered are:

- (1) Is there motivation in Enochs to suggest a combination with Heard, or vice-versa?; and
- (2) Is there motivation in the knowledge generally available to one of ordinary skill in the art to make the combination?

As to the first question, Enochs does nothing more to suggest a combination with Heard as does the prior art discussed in Applicant's specification. In particular, Enochs specifically discloses "metal straps 28 and 29". (col. 2: 46). Applicant's claimed invention is altogether directed at solving the problems created by metal straps. Thus, Enochs certainly does not and cannot provide a solution to a problem which it does not even recognize. Enochs' usage of metallic straps shows that the inventors were either unaware or unconcerned with the problems caused by using metallic straps. Whatever the case may have been, it is nonetheless certain that Enochs cannot suggest the claimed invention when it uses the very structure that causes the problems overcome by Applicant.

Likewise, nothing in Heard suggests or motivates a combination with Enochs. In particular, Heard is directed to a mounting device. The device is mounted to a post and configured to carry a channel bearing member, such as a sign. Heard does not disclose securing a heavy device to wall, and certainly does not disclose any type of restraint for water heaters.

As to the second question, the standard is the knowledge of one with ordinary skill in the art. However, the inventors of the Enochs reference and the Heard reference

were not those of ordinary skill in the art, but those of superior skill in the art as evidenced by the issuance of patents for their respective claimed inventions. Yet, neither of these inventors disclose a security system for water heaters having a woven, flexible configuration.

The Office Action states that the claims are unpatentable over Enochs in view of Heard. Enochs issued in October, 2000 while Heard had issued twenty-five (25) years earlier in July, 1975. Thus, Heard was already available as a reference during the time Enochs had conceived and patented their invention. If Enochs truly suggested or motivated a combination with a reference that taught a flexible, woven configuration, then the disclosure in Heard was certainly available to Enochs for usage. This is not a situation where the feature lacking in the primary reference (i.e., the flexible woven configuration) was not discovered until after the primary reference had issued. Instead, the alleged feature had been known for decades prior to the time that Enochs sought to patent their invention.

Therefore, if it had not been obvious to one of superior skill in the art to provide a security system for water heaters with a flexible, woven configuration, then it would certainly not be obvious to one of mere ordinary skill in the art to do so.

In fact, the hazards caused by metallic straps were not even addressed by either groups of inventor, both of which possessed superior skill in the art. Thus, how can a solution be obvious to one of ordinary skill in the art when the problem it solves is not even recognized by one of superior skill in the art?

Similarly, Claims 1-2, 13-16 and 24 were rejected under §103(a) as being unpatentable over Chapman (6,202,977). The Office Action states that Chapman

disclosed the claimed invention except for the limitation of the strap assembly being woven and free of sharp edges or being constructed of a non-metallic material. This feature, however, is the heart of Applicant's claimed invention. The statement in the Office Action is analogous to saying that the prior art shows everything except the point of novelty. Even Applicant stated in the prior art section of the specification that current water heater security systems have straps.

The Examiner would have had to look no further than the admitted prior art in Applicant's specification to determine that Chapman is exactly the problem which Applicant solves. The teaching or suggestion to make the claimed combination must be found in the reference itself, and not be based on Applicant's disclosure. *MPEP § 2142*. Chapman, however, does not and cannot propose to solve a problem which is caused by its very own disclosure, namely, the use of metallic straps. Since Chapman advocates the use of stainless steel for the straps, it certainly does not provide any motivation or suggestion for solving the problems caused by such usage.

Claims 4, 5, 19 and 20 were rejected under § 103(a) as being unpatentable over Enochs combined with Heard and in further view of Bickis, Sr. (3,967,347). Bickis was added to the combination for disclosing a buckle with an adjustable relationship with one of the ends of the straps. However, the combination of Enochs and Heard must fail for the reasons discussed above which are incorporated herein by reference. The same applies to Claims 6-8 and 17 which were rejected over the combination of Enochs and Heard and in view of a third reference.

SECONDARY CONSIDERATIONS OF NON-OBVIOUSNESS

Copying a claimed invention is evidence of non-obviousness. *Diamond Rubber Co. v. Consolidated Rubber Tire Co.*, 220 U.S. 428 (1911). Applicant has attached hereto Exhibit 1 showing infringement by a competitor providing secondary considerations of non-obviousness. This is the same infringer which prompted Applicant's Petition to Make Special filed on July 26, 2004 [See PETITION TO MAKE SPECIAL UNDER 37 CFR § 1.102(d)]. The emergence of infringing systems in the marketplace after Applicant introduced its patent pending system shows the long felt but unsolved needs with respect to securing water heaters.

Furthermore, laudatory statements by an accused infringer is also evidence of non-obviousness. Akzo N.V. v. U.S. Int'l Trade Comm'n, 808 F.2d 1471, 1481 (Fed. Cir. 1986), *cert. denied*, 482 U.S. 909 (1987). In the attached Exhibit 1, Applicant has enclosed photocopies of the front and back sides of the packaging for the accused product. The front side touts the product as a "Soft Belt-Style Restraint." Thus, the accused infringer is touting the unique aspects of Applicant's claimed invention by emphasizing on the very first line of the front of the package that the restraint is soft, and belt-style, i.e., unlike a metal strap. Both the front and back sides contain "PATENT PENDING" notations on the bottom right hand corner. Thus, the non-obviousness of Applicant's claimed invention is further supported by the efforts of others to patent the same features.

SUMMARY

Based on the above amendments and accompanying remarks, Applicant respectfully submits that all pending claims are in condition for allowance and respectfully requests a Notice of Allowance. Applicant encourages the Examiner to telephone the undersigned attorney if it appears that a telephone conference would facilitate allowance of the application.

I hereby certify that this correspondence is being deposited with the United States Postal Service as first class mail in an envelope addressed to:
Commissioner for Patents, P.O. Box 1450,
Alexandria, VA 22313-1450 on

July 1, 2005

by Eric Hoover



Signature

July 1, 2005

Respectfully submitted,



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Attachments: Replacement Sheets (3 Sheets)
Annotated Sheets Showing Changes (3 sheets)
Exhibit 1 – infringing systems

Amendments to the Drawings:

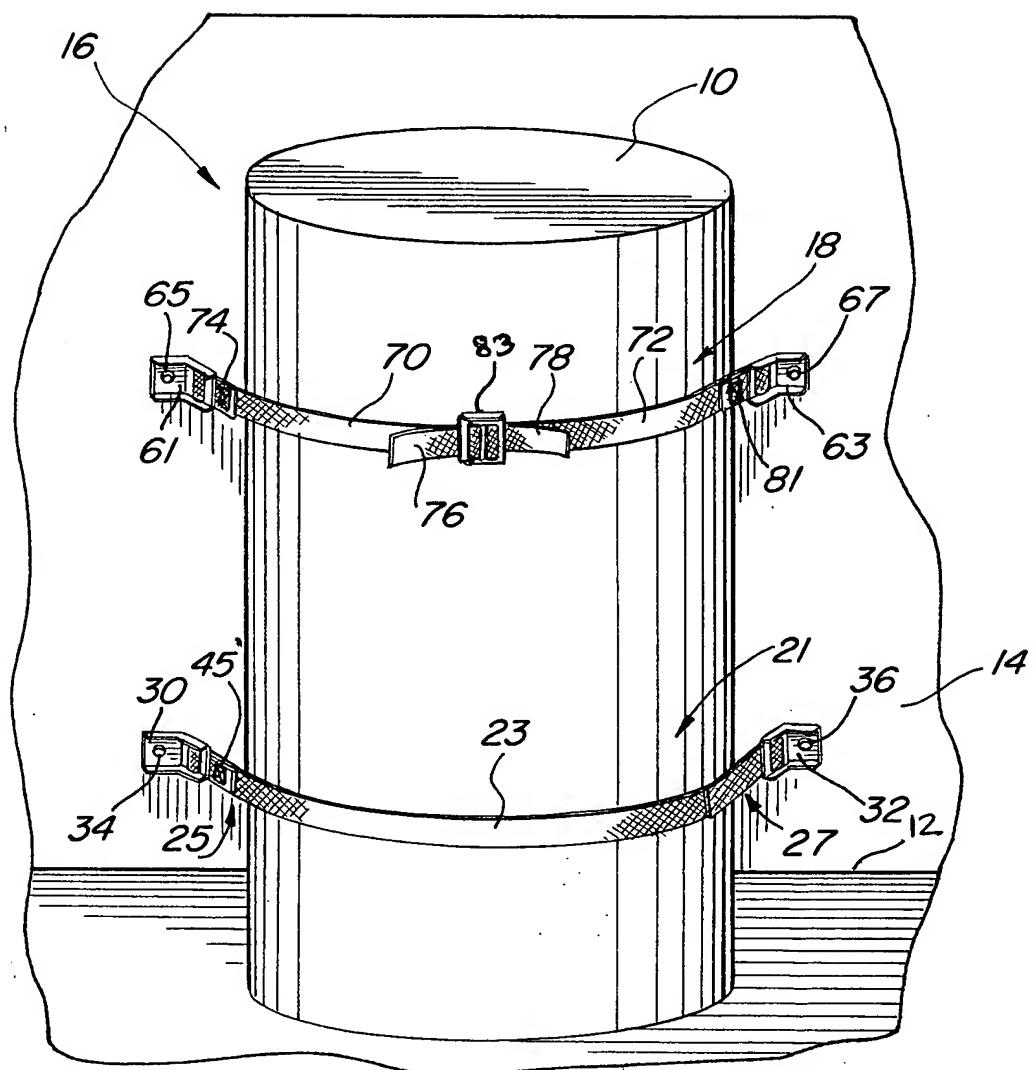
The attached sheet of drawings include changes to Figures 1, 5, 8 and 11. In Figure 1, numerals 12 and 83 have been added. In Figure 5, numerals 55 and 57 have been added. In Figure 8, numeral 83 has been added. In Figure 11, numerals 72, 78 and 83 have been added, and numeral 75 deleted. The leader lines from numerals 110 and 112 have been revised to point to the correct structural features. No new matter has been added.

Attachments: Replacement Sheets (3 sheets)

Annotated Sheets Showing Changes (3 sheets)

ANNOTATED SHEET }

FIG. 1



ANOTATED SHEET

FIG. 5

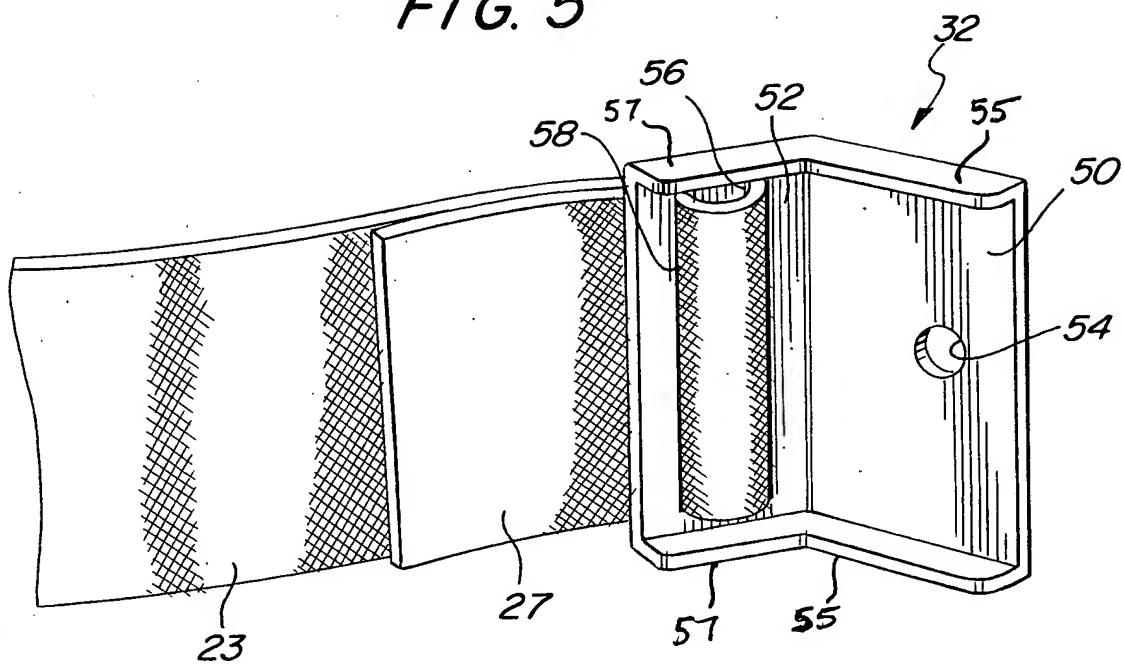


FIG. 6

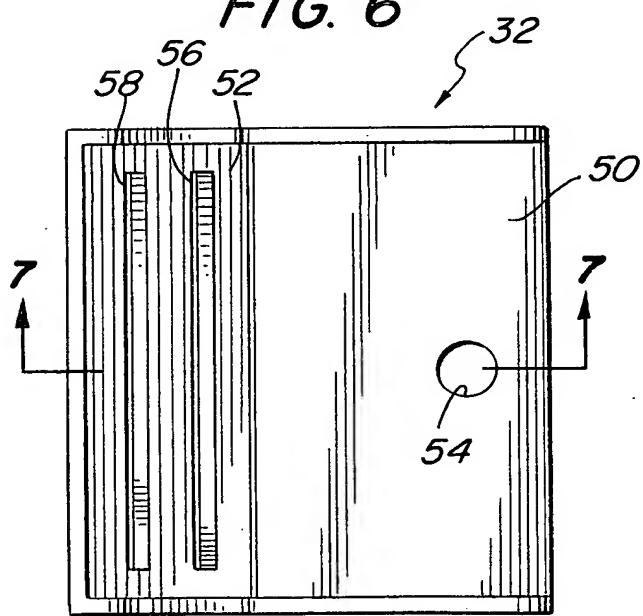
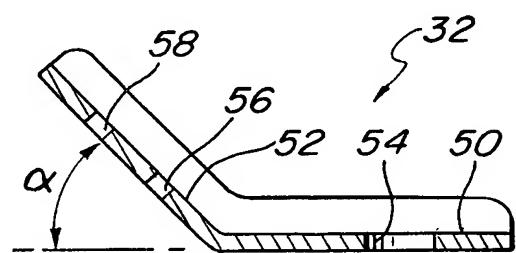


FIG. 7



ANOTATED SHEET

FIG. 10

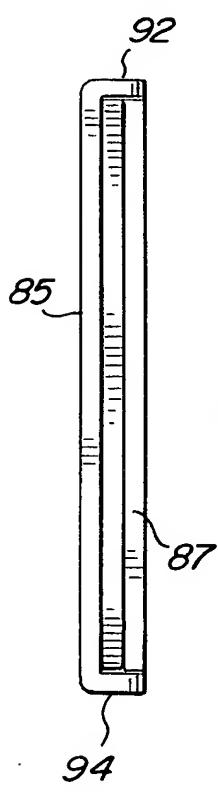


FIG. 8

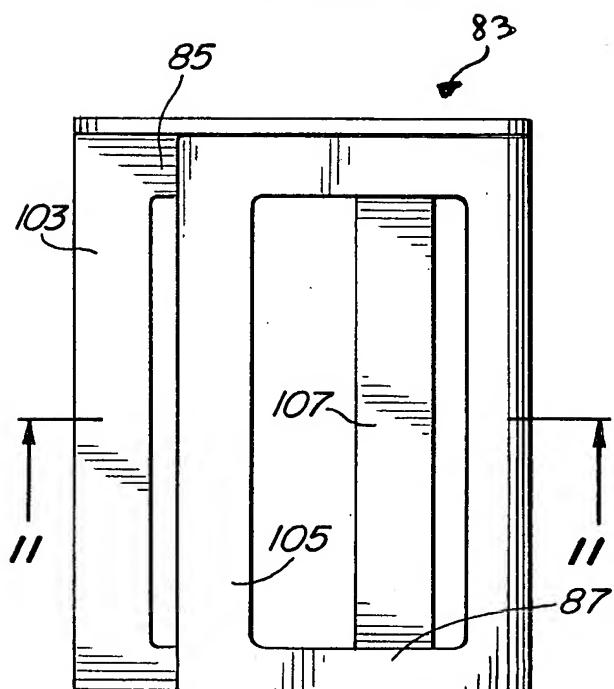


FIG. 9

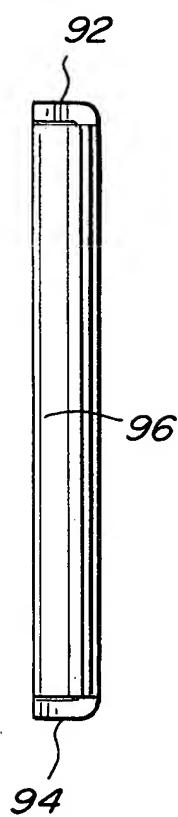


FIG. 11

